



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 27, 1994

Ms. Helen M. Gros  
Division Chief, General Counsel  
Legal Department  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR94-418

Dear Ms. Gros:

Your predecessor asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The request was assigned ID# 24768.

The director of the Houston Public Works and Engineering Department has received a request for "all recordings, notes or transcripts of interviews conducted during the course of the investigation" of three individual city employees who have been accused of wrongdoing in their public employment. Your predecessor indicated that the department will give the requestor access to those materials already released to Channel 13, the television station that first made the charges. However, your predecessor wished to withhold the remaining records and claimed that they are excepted from public disclosure under sections 552.103 and 552.108 of the Government Code.

Section 552.108(a) excepts from required public disclosure "[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . ." For cases that are still under active investigation or prosecution, section 552.108(a) may be invoked to except from disclosure all information except that generally found on the first page of the offense report. Open Records Decision No. 611 (1992) at 2. Information generally found on the first page of an offense report may be withheld only if the governmental body demonstrates that releasing the information would unduly interfere with law enforcement or prosecution. Open Records Decision No. 508 (1988) at 2. In closed cases, however, the governmental body must demonstrate that release of the information would unduly interfere with law enforcement or prosecution before it can withhold any of the information under section 552.108(a). Open Records Decision No. 611 at 2.

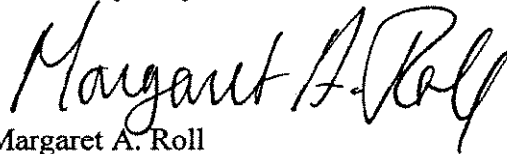
We conclude that section 552.108(a) does except from disclosure the records submitted for review except for the information generally found on the first page of the offense report. Your predecessor indicated that the records relate to an ongoing investigation that has been turned over to the district attorney for possible prosecution. This information is sufficient to establish that the requested records relate to an active case and that the department may withhold under section 552.108(a) all of the requested information except that generally found on the first page of the offense report.

We note, however, that the location of the information is not determinative of its status under section 552.108(a). The information identified by the court in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), as information generally found on the first page of the offense report must be released regardless of where it is found. See Open Records Decision No. 127 (1976) at 5. Therefore, to determine what information must be released, the department will need to examine the type of information rather than its location.<sup>1</sup>

We also note that one of the records submitted for review is a video tape of portions of news broadcasts on Channel 13 regarding the alleged wrongdoing. Although the department may withhold this tape under section 552.108(a), the department may also choose to release it or any other piece of the requested information. Both sections 552.108 and 552.103 are discretionary exceptions and, thus, give the governmental body the discretion to release information that might be excepted from disclosure by either of these sections. Open Records Decision Nos. 511 (1988) at 3; 177 (1977) at 3.

Because case law and prior published open records decisions resolve this request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

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<sup>1</sup>Information found on the first page of an offense report normally may not be withheld under section 552.103 either. Open Records Decision No. 597 (1991). Therefore, we do not need to address your claim that section 552.103 excepts the requested information from disclosure.

Ref.: ID# 24768

Enclosures: Submitted documents

cc: Mr. Tom A. Dickens  
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(w/o enclosures)